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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 BAO XUYEN LE, individually and as
8 Personal Representative of the Estate of
9 Tommy Le; HOAI "SUNNY" LE;
10 DIEU HO; UYEN LE; KIM TUYET LE;
11 QUOC NGUYEN; TAM NGUYEN;
12 DUNG NGYUEN; and JEFFERSON HO

13 Plaintiffs,

14 v.

15 REVEREND DR. MARTIN LUTHER
16 KING, JR. COUNTY; and KING
17 COUNTY DEPUTY SHERIFF CESAR
18 MOLINA,

19 Defendants.

C18-55 TSZ

MINUTE ORDER

20 The following Minute Order is made by direction of the Court, the Honorable
21 Thomas S. Zilly, United States District Judge:

22 (1) Defendant King County's motion for summary judgment, docket no. 78, is
23 GRANTED in part, STRICKEN in part, DENIED in part, and DEFERRED in part, as
follows:

(a) With regard to the wrongful death and survival actions asserted by
Bao Xuyen Le as Personal Representative of the Estate of Tommy Le (Second
Cause of Action), King County's motion for summary judgment, which was
unopposed on the subject, is GRANTED, the wrongful death action is
DISMISSED with prejudice, see RCW 4.20.020, and damages for pain and
suffering, anxiety, emotional distress, and/or humiliation suffered by Tommy Le
will not be recoverable in the survival action, see RCW 4.20.046(1);

1 (b) With regard to any immunity from suit pursuant to RCW 4.24.420,
2 King County's motion for summary judgment is STRICKEN as moot;

3 (c) With regard to whether King County Deputy Sheriff Cesar Molina
4 used excessive force in tasing and/or shooting Tommy Le (First Cause of
5 Action), and whether any use of excessive force deprived Le's parents of a liberty
6 interest in the companionship and society of their son (First Cause of Action), the
7 Court concludes that genuine disputes of material fact exist, and King County's
8 motion for summary judgment on those issues is DENIED;

9 (d) With regard to plaintiffs' assertion that King County is liable under
10 *Monell v. Dep't of Soc. Servs. of N.Y.C.*, 436 U.S. 658 (1978), and its progeny,
11 King County's motion for summary judgment is DEFERRED; and

12 (e) With regard to the outrage claim (Third Cause of Action), King
13 County's motion for summary judgment is DEFERRED.

14 (2) Defendant Deputy Molina's motion for summary judgment, docket no. 87,
15 is GRANTED in part, DENIED in part, and DEFERRED in part, as follows:

16 (a) With regard to the wrongful death and survival actions asserted by
17 Bao Xuyen Le as Personal Representative of the Estate of Tommy Le (Second
18 Cause of Action), Deputy Molina's motion for summary judgment, which joined
19 in King County's motion for summary judgment, which was unopposed on the
20 subject, is GRANTED as set forth in Paragraph 1(a), above;

21 (b) With regard to plaintiffs' claim of outrage (Third Cause of Action),
22 Deputy Molina's motion for summary judgment is GRANTED, and such claim is
23 DISMISSED with prejudice as to Deputy Molina; plaintiffs' outrage claim is not
based on any actions taken by Deputy Molina, and plaintiffs have described no
theory pursuant to which they seek to hold Deputy Molina liable for outrage, *see*
Plas.' Resp. at 75-80 (docket no. 127);

(c) With regard to whether Deputy Molina used excessive force in
tasing and/or shooting Tommy Le (First Cause of Action), and whether any use
of excessive force deprived Le's parents of a liberty interest in the companionship
and society of their son (First Cause of Action), the Court concludes that genuine
disputes of material fact exist, and Deputy Molina's motion for summary
judgment on those issues is DENIED; and

(d) With regard to Deputy Molina's assertion of qualified immunity, his
motion for summary judgment is DEFERRED.

1 (3) At oral argument, scheduled for May 9, 2019, at 10:00 a.m., counsel shall
2 be prepared to address the deferred portions of the pending motions,¹ as well as whether
3 the Court may and/or should defer ruling until trial on Deputy Molina's assertion of
4 qualified immunity.

5 (4) Pursuant to the parties' stipulation, docket no. 144, the deadline for
6 defendants to serve their pretrial statements is EXTENDED to May 7, 2019.

7 (5) The Clerk is directed to send a copy of this Minute Order to all counsel of
8 record.

9 Dated this 26th day of April, 2019.

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William M. McCool
Clerk

s/Karen Dews
Deputy Clerk

¹ In connection with the issue of whether King County has Monell liability, counsel shall be prepared to address (i) at the relevant time, who was an official with final policy-making authority for King County, (ii) whether King County can be liable under Monell when King County Sheriff Mitzi Johanknecht did not explicitly accept or reject the findings of the Use of Force Review Board, and (iii) whether a factual dispute exists concerning plaintiff's assertion that the Use of Force Review Board's process was flawed or a "sham," and, if so, what facts are in dispute. See Larez v. L.A., 946 F.2d 630 (9th Cir. 1991); McRorie v. Shimoda, 795 F.2d 780 (9th Cir. 1986); German v. Roberts, 2017 WL 6547472 (W.D. Wash. Dec. 22, 2017); Kaur v. City of Lodi, 263 F. Supp. 3d 947 (E.D. Cal. 2017); Thomas v. Cannon, 2017 WL 2289081 (W.D. Wash. May 25, 2017); Edenfield v. Estate of Willets, 2006 WL 1041724 (D. Haw. Apr. 14, 2006); Long v. City & Cty. of Honolulu, 378 F. Supp. 2d 1241 (D. Haw. 2005); Mendez v. Cty. of San Bernardino, 2005 WL 5801541 (C.D. Cal. Apr. 4, 2005); Kanae v. Hodson, 294 F. Supp. 2d 1179 (D. Haw. 2003). With respect to the outrage claim, counsel shall be prepared to address (i) whether King County has a qualified privilege with respect to the press releases at issue and any other communications with the media and public, see Bender v. City of Seattle, 99 Wn.2d 582, 601-02, 664 P.2d 492 (1983), and (ii) whether Le's mother, one of his aunts (Uyen Le), and his siblings, who were not present when King County Detective Chris Johnson allegedly made the statements on which the outrage claim is partially based, are outside the class of persons entitled to assert such claim, see Restatement (Second) of Torts § 46(2)(a) & cmt. 1 (AM. LAW INST. 1965) (cited with approval in Grimsby v. Samson, 85 Wn.2d 52, 59-60, 530 P.2d 291 (1975)); see also Reid v. Pierce Cty., 136 Wn.2d 195, 202-04, 961 P.2d 333 (1998).